

Arguments to Revert Back to the Old NLRB Election Process

On April 15, 2015, the NLRB's "expedited election" final rules took effect. During the public comment period prior to adoption, I wrote to the NLRB to express my opposition to the shortened time frame. As an ex-Union official with over 20 years' experience (many of those years spent as a National Organizing Director with over 1,000 organizing campaigns taken to election), I have a unique insight into the mechanics of manipulating employees' emotions into voting to become a unionized member.

First, the stated reason for the expedited rule change was to prevent the management teams and/or labor consultants and Legal Representatives from abusing the employees' rights under Section 7 of the National Labor Relations Act (NLRA). Section 7 guarantees employees the right to create, join, and participate in a Labor Union without being unfairly intimidated or punished by their employers. While I do not deny that some small percentage of employers have broken the conduct rules under the NLRA over the years, I surmise that most of those instances were caused by ignorance of the NLRA and not out of malice towards their employees.

I have been frustrated for years by so-called "scientific studies" that have been unquestioningly trotted out as evidence that demonstrates horrific worker conditions and abuses perpetrated by management and/or their agents. Many of these studies have been submitted, promoted and/or hyped by [Kate Bronfenbrenner](#), Director of Labor Education Research and a Senior Lecturer at Cornell University's School of Industrial and Labor Relations.

Due to my personal knowledge of Kate (who I knew when I was a union official) and her methods, I am led to believe that her research focus boils down to a conclusion in search of evidence. She works together with major unions and is promoted by them as an expert on labor data.

Bronfenbrenner has spoken at many union conventions across the country and has been given carte blanche access by Union officials to sensitive internal organizing data.

I suggest that Kate is not an independent or objective researcher, rather she is in complicity with the highest levels of labor union officials. Her research and research results, in my opinion, is merely her regurgitation of whatever results union officials want reported to make unions appear as underdogs and victims of a massive, nationwide conspiracy of management.

I find this conclusion to be particularly humorous, as most of the companies I interact with do not even realize that they had union organizing activity in their facility until they receive the NLRB petition. These management teams have neither the time nor resources to join this so-called nationwide club which abuses their employees' Section 7 rights as part of a strategic plan. Again, most of the abuses that I saw when serving as an Organizing Director were made from ignorance, not malice.

Bronfenbrenner's study results are achieved by submitting questionnaires to union organizing directors and/or lead union organizers who file petitions. These questionnaires include leading questions asking for any abuses committed by management during organizing campaigns.

Union organizing is very expensive for unions. Organizing directors are graded by their success and most campaign organizers are "Casual Organizers" (*i.e.* union members who by contract have the right to take a union leave for official union business and are paid flat lost time wages with no overtime pay). Many times, members are chosen with preference for the lowest pay scale to conserve monetary resources.

These casual organizers are also graded on their success, so they always have readymade excuses for any loss.

After reading Kates studies, I can personally attest that I had about 2% of my campaigns where I had encountered widespread abuse on the part of management or their agents. It is also important to understand that it is the organizers' job to inflate workers' issues into full fledged revolts against management. These are the ABC's of successful organizing tactics.

Since leaving the union over 16 years ago, I have worked with management. I (or any consultant working with me) would never permit any abuse of workers' Section 7 rights. The real-world truth is that most management teams are hyper sensitive to not violate their employees' rights and I have never met or worked with any attorney who would permit such abuses.

Management primarily consists of dedicated professionals who respect the rule of law. Even if their scruples were not driven by professionalism, it would be detrimental to their company and career to abuse workers. The loss in production and the cost to litigate any Unfair Labor Practices could severely devastate large companies and could drive smaller companies out of business completely.

Second, as important as I feel it is to understand all the dynamics in play before, during, and after a union organizing attempt (regardless of the result), the truth is they mean little when it comes to the bottom line of the employees' rights to organize. The NLRA guarantees employees the right to create, join, and participate in a Labor Union. However, an often overlooked, but fully-equal right that the NLRA also guarantees is a worker's right to refrain from these activities.

In my opinion, the restricted election time frame rule has resulted in an abuse of employees' rights to receive a full education on the facts of what a union can and cannot achieve for members, rules and restrictions it may or may not place on these members, and member recourse.

Workers' rights as set forth in the NLRA are only fully recognized when workers can analyze the pros and cons of union representation free of undue emotional pressure. This is critical to allowing them to judge how they are going to vote based on what is best for them and their family.

Companies need time to work with their legal team to provide employees with information on both sides of the issues. Creating a well thought out and legal plan that complies with the NLRA takes time and there is no "plan in a box" because each company is set up differently and has a unique culture and business process. The ownership/leadership teams must find a way to continue to operate effectively while working with the legal team. This is often simple not possible when they only have 21 days educate workers prior to a vote.

In my opinion, the NLRB should vote to return to the previous election timing rules as the supposed benefits of the shortened election timeframe were premised on flawed research. This flawed research combined with an employer's inability to provide a sufficient educational process of their own to their employees in a shortened timeframe (while unions continue to work for months on their organizing/card signing process prior to filing the representation petition) are adequate reason to return to the previous election timeframe.

It is my opinion that the NLRB should also vote to return to the previous rules on "Excelsior lists". My experience reveals that employees are generally not happy when they find out that their personal information has been given to the union. They frequently find it to be an invasion of privacy as that information has no relation to their work life.

A real-world problem we see is that companies spend far too much time gathering the personal emails and cell phone numbers of their employees to provide to the union as none of this data is required as part of employees' work lives (especially focusing on personal emails) and is rarely kept on file. In a large company this compilation can take an army of people to dig through old resumes, electronic resumes, supervisors' phones that may contain the information and more. This is a process that can take many days to weeks. This is time wasted because the employer should be focusing on educating employees on their rights and unionism and running a clean campaign in laboratory-like conditions.

The National Labor Relations Act was designed to level the playing field and create a system that is fair for workers, employers and unions. The NLRA allows for employers to inform employees about their rights and the realities of unionism and then it is up to the employee to decide without fear of reprisal, threats etc. Shortening the time allotted to provide this process leaves employees at the voting booth still confused or not completely understanding labor unions.

The Ambush Elections rules created a system that threw away the original ideology of the NLRA to stack the deck in favor of unions.

